

Software Maintenance and Technical Support Agreement

This Agreement for Software Maintenance and Technical Support (this “Agreement”), made and effective as of _____ (“Effective Date”), by and between the State of Iowa, acting by and through the Iowa Department of Human Services (“Agency”) and [name of vendor], a corporation organized under the laws of _____ (“Vendor”). The parties agree as follows:

Section 1. Purpose and Term.

- 1.1 Purpose.** The parties have entered into this Agreement for the purpose of retaining Vendor to provide maintenance and technical support services for the software described in Schedule A. Vendor will provide all of the services described in this Agreement.
- 1.2 Term.** This agreement supplements the Services Contract entered into between the Agency and Vendor pursuant to RFP No. ACFS 11-134 (“Services Contract”). The initial term of this Agreement is for one year, commencing on the day following the termination or expiration of the Services Contract (the “Initial Term”), unless terminated earlier in accordance with the terms of this Agreement. After the expiration of the Initial Term, the Agency may elect to renew this Agreement with respect to all or a portion of the Software for additional one-year periods (“Renewal Terms”). The Vendor will provide the Agency with written notice of the pending expiration of the Initial Term and every subsequent Renewal Term at least 90 days before such expiration to afford the Agency with adequate time to provide written notice of its intention to renew the term of this Agreement. The Agency may elect to renew maintenance and technical support for some but not all of the Software by paying the appropriate pro-rata portions of the maintenance fee. The decision to renew this Agreement with respect to all or any portion of the Software will be at the sole option of the Agency and may be exercised by the Agency by providing written notice to Vendor. The Agency may continue to renew this Agreement for so long as it uses all or any part of the Software under the Software License Agreement, and the Vendor shall provide maintenance and support services during each and every Renewal Term in accordance with the terms of this Agreement. Any termination of this Agreement in accordance with the terms hereof shall not act to terminate the Software License Agreement.

Section 2. Definitions.

In addition to any other terms that may be defined elsewhere in this Agreement, the following terms shall have the following meanings:

“Confidential Information” means, subject to any applicable State and federal laws and regulations, including but not limited to Iowa Code Chapter 22, any confidential or proprietary information or trade secrets disclosed by the Agency to the Vendor that, at the time of disclosure, is designated as confidential (or like designation), is disclosed in

circumstances of confidence, or would be understood by the parties, exercising reasonable business judgment, to be confidential. Confidential Information does not include any information that: (i) was rightfully in the possession of the Vendor from a source other than the Agency party prior to the time of disclosure of the information by the Agency to the Vendor; (ii) was known to the Vendor prior to the disclosure of the information by the Agency; (iii) was disclosed to the Vendor without restriction by an independent third party having a legal right to disclose the information; (iv) is in the public domain or shall have become publicly available other than as a result of disclosure by the Vendor in violation of this Agreement or in breach of any other agreement with the Agency; (v) is independently developed by the Vendor without any reliance on Confidential Information disclosed by the Agency; (vi) is disclosed or is required or authorized to be disclosed pursuant to law, rule, regulation, subpoena, summons, or the order of a court, lawful custodian, governmental agency or regulatory authority, or by applicable regulatory or professional standards; or (vii) is disclosed by the Vendor with the written consent of the Agency.

“Deficiency” means a defect, flaw, anomaly, failure, omission, interruption of service, or other problem of any nature whatsoever with respect to the Software, including, without limitation, any failure of the Software to conform to, meet, or function in accordance with an applicable Specification. Deficiency also includes the lack of something essential or necessary for completeness or proper functioning of the Software.

“Documentation” means any and all technical information, commentary, explanations, design documents, system architecture documents, database layouts, code, test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation and materials related to or used in conjunction with the Software, in any medium, including hard copy, electronic, digital, and magnetically or optically encoded media.

“Enhancements” shall mean any and all updates, upgrades, patches, additions, modifications, releases, or other enhancements made by Vendor with respect to the Software, any new Vendor releases of Software, and all changes to the Documentation and Source Code made by Vendor as a result of such Enhancements.

“Services Contract” means the Services Agreement by and between the Agency and Vendor dated effective as of _____.

“Software” means the proprietary software components installed as part of the Iowa Medicaid Management Information System pursuant to the service contract that arose from RFP # ACFS 11-134 and all other software, programs, applications and components listed in Schedule A, and all related Documentation and Enhancements, and all copies of the foregoing.

“Software License Agreement” means the Software License Agreement by and between Vendor and the Agency dated _____.

“Specifications” mean all specifications, requirements, technical standards, performance standards, representations and other criteria related to the Software stated or expressed in this Agreement, the Services Contract, Documentation, the Agency’s Request for Proposal No. ACFS 11-134 for the Iowa Department of Human Services Request for Proposal ("RFP"), and the Vendor’s proposal dated _____, in response to the RFP ("Proposal"). Specifications shall include any specifications, standards or criteria stated or set forth in any applicable state, federal, foreign and local laws, rules and regulations. The Specifications are incorporated into this Agreement by reference as if fully set forth in this Agreement.

“Third Party” means a person or entity (including, but not limited to any form of business organization, such as a corporation, partnership, limited liability corporation, association, etc.) that is not a party to this Agreement.

“Warranty Period” means the warranty period specified under the Software License Agreement during which period the Vendor is required to correct any Deficiencies pertaining to the Software, repair or replace the Software, or to otherwise address or resolve any problem related to the Software or Agency’s use thereof.

Section 3. Documents Incorporated.

3.1 Incorporation. The Agency’s Request for Proposal No. ACFS 11-134 for the Iowa Department of Human Services Request for Proposal ("RFP") and the Vendor’s proposal dated _____, in response to the RFP ("Proposal"), together with any clarifications, attachments, appendices, or amendments to the RFP and Proposal are incorporated into this Agreement by this reference as if fully set forth in this Agreement; provided, however, that none of the Vendor’s proposed exceptions or modifications to the sample contracts attached to the RFP shall be incorporated into this Agreement unless expressly set forth herein.

3.2 Contractual Obligations. The terms and conditions of the RFP and of the Proposal are made contractual obligations of Vendor, except that any proposed revisions or modifications made by Vendor to the sample contracts attached to the RFP Proposal shall not be deemed to limit, modify or otherwise affect any of the contractual obligations of Vendor or the Agency hereunder, unless expressly stated herein.

3.3 Preference. In the case of any inconsistency or conflict between the specific provisions of this document, the RFP or the Proposal, any inconsistency or conflict shall be resolved as follows: first, by giving preference to the specific provisions of this document and any schedules, exhibits or other attachments; second, by giving preference to the specific provisions of the RFP; and third, by giving preference to the specific provisions of the Proposal.

3.4 No Inconsistency. The references to the parties' obligations, which are contained in this document, are intended to change, modify, supplement or clarify the obligations as stated in the RFP and the Proposal. The failure of the parties to make reference to

the terms of the RFP or Proposal in this document shall not be construed as creating a conflict and will not relieve Vendor of the contractual obligations imposed by the terms of the RFP and the Proposal. Terms offered in the Proposal, which exceed the requirements of the RFP, shall not be construed as creating an inconsistency or conflict with the RFP or this document. Notwithstanding anything herein to the contrary, the Agency shall have only those obligations that are expressly stated in this document, and the Proposal does not create any express or implied obligations of the Agency.

Section 4. Scope of Work.

- 4.1 Scope of Work.** Vendor shall perform and provide the Agency with the Software maintenance and technical support services in accordance with Schedule A and all other terms and conditions of this Agreement. Schedule A is incorporated into this Agreement by this reference as if fully set forth in this Agreement.
- 4.2 Amendments to Schedule A.** The parties agree that Schedule A may be amended, modified, or replaced at any time during the term of this Agreement upon the mutual written consent of the parties.
- 4.3 Performance Standards.** The parties agree that the performance standards and related payment, monitoring and review provisions set forth in Schedule B are incorporated herein by this reference as if fully set forth in this Agreement.
- 4.4 Agency Not Required to Accept or Install Enhancements.** Vendor shall not condition any of the Agency's rights or Vendor's obligations under this Agreement, or any other contract related to the Software, on the Agency accepting or installing any Enhancements or additional functionality provided by Vendor.
- 4.5 Manufacturers' Warranties.** Vendor shall take all action necessary to ensure that the State and the Agency shall be entitled to receive and enjoy all warranties, indemnities and other benefits associated with the Software. At the Agency's request, Vendor shall assign to the State and the Agency all of the Software manufacturer's warranties and indemnities pertaining to the Software under any license or other agreement between Vendor and any Third Parties relating to the Software.

Section 5. Compensation and Additional Rights and Remedies.

- 5.1 Compensation.** In consideration of Vendor providing the Agency with software maintenance and technical support services in accordance with the terms and conditions of this Agreement, Vendor shall be entitled to receive the fees or other compensation associated with such services as specified in Schedule A, subject to all terms and conditions of this Agreement. Vendor is not entitled to payment for any services provided under this Agreement if the Agency reasonably determines that such services have not been satisfactorily or completely delivered or

performed, or that there is a continuing material Deficiency occurring with respect to the Software. In no event shall the Agency be obligated to pay Vendor any fees, costs, compensation or other amounts in addition to or in excess of the amount specified in Schedule A, unless the Agency otherwise agrees to pay such fees, costs, compensation other amounts pursuant to a written amendment to this Agreement executed by the Agency. No advance payments shall be made for any services provided by Vendor pursuant to this Agreement.

5.2 Invoices. Vendor shall, on a quarterly basis submit an invoice to the Agency requesting payment of the fees or other compensation specified in Schedule A for Software maintenance and technical support services provided by Vendor during the previous quarter. All invoices submitted by Vendor shall comply with all applicable State of Iowa rules and procedures concerning the payment of such fees, charges or other claims and shall contain appropriate documentation as necessary to support the fees or charges included on the invoice and all information reasonably requested by the Agency. The Agency will pay all approved invoices in arrears and in conformance with Iowa Code section 8A.514 and 11 Iowa Admin. Code 41.1(2). The Agency may pay in less than sixty (60) days, as provided in Iowa Code section 8A.514. However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code section 8A.514. Notwithstanding anything herein to the contrary, the Agency shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if the Agency believes the invoice is inaccurate or incorrect in any way.

5.3 Erroneous Payments and Credits. Vendor shall promptly pay or refund to the Agency the full amount of any overpayment or erroneous payment within ten (10) business days after either discovery by the Vendor or notification by the Agency of the overpayment or erroneous payment. In the event Vendor fails to timely pay or refund any amounts due the Agency under this section 5.3 the Agency will charge interest of one percent (1%) per month compounded on the outstanding balance after the date payment or refund is due, or the maximum amount allowed by law, whichever is greater. The Agency may, in its sole discretion, elect to have Vendor apply any amounts due to the Agency under this Section 5.3 against any amounts payable by the Agency under this Agreement or the Software License Agreement.

5.4 Reimbursable Expenses. There shall be no reimbursable expenses associated with this Agreement separate from the compensation referred to in this section. Vendor shall be solely responsible for all costs, charges and expenses it incurs in connection with its performance under this Agreement, including, but not limited to, travel, mileage, meals, lodging, equipment, supplies, personnel, salaries, benefits, insurance, training, conferences, telephone, utilities, start-up costs, and all other costs and expenses of Vendor.

5.5 Set-off Against Sums Owed by Vendor. In the event that Vendor owes the Agency or the State any sum under the terms of this Agreement, any other agreement, pursuant to a judgment, or pursuant to any law, the Agency may set off

such sum against any sum invoiced to the Agency by Vendor in the Agency's sole discretion unless otherwise required by law. Any amounts due to the Agency as damages may be deducted by the Agency from any money or sum payable by the Agency to Vendor pursuant to this Agreement or any other agreement between Vendor and the Agency.

5.6 Withholding Payments. In addition to pursuing any other remedy provided herein or by law, the Agency may withhold compensation or payments to Vendor, in whole or in part, without penalty or legal liability to the Agency or work stoppage by Vendor, in the event the Agency determines that: (i) Vendor has failed to perform any of its duties or obligations as set forth in this Agreement and/or the Software License Agreement; or (ii) any Software has failed to meet or conform to any applicable Specifications or contains or is experiencing a Deficiency. No interest shall accrue or be paid to Vendor on any compensation or other amounts withheld or retained by the Agency under this Agreement.

5.7 Correction/Cure. The Agency may provide or procure the services reasonably necessary to cure any default by Vendor that is not timely cured by Vendor, in which event Vendor shall reimburse the Agency for the actual costs incurred by the Agency for such services (or for the reasonable value of the time expended by any Agency or State employees who provide such services). In addition, Vendor shall cooperate with the Agency or any Third Parties retained by the Agency who assist in curing such default, including by allowing access to any pertinent materials or work product of Vendor.

5.8 Monitoring and Review. The Agency shall monitor and review Vendor's performance under this Agreement to ensure compliance with this Agreement. Such review and monitoring shall include the Agency's assessment of invoices and reports furnished by Vendor pursuant to this Agreement.

Section 6. Security Regulation; Cooperation.

Vendor and Vendor's personnel shall comply with the Agency's and the State's security regulations including any procedure which the Agency's personnel, contractors and consultants are normally asked to follow. Vendor agrees to cooperate fully and to provide any assistance necessary to the Agency in the investigation of any security breaches that may involve Vendor or Vendor's personnel.

Section 7. Federal License.

Notwithstanding anything herein to the contrary, the State shall have all ownership rights in software or modifications thereof to the extent required by 45 C.F.R. § 95.617(a). In addition, the federal government shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such software, modifications, and documentation. This obligation does not attach to proprietary operating/vendor software packages that are provided at established catalog or market prices and sold or leased to the general public.

Section 8. Representations, Warranties and Covenants

- 8.1** Vendor represents and warrants that it has full legal power and authority and has secured all rights necessary to provide all of the services to be provided by it to the Agency under this Agreement, and that Vendor's performance of its obligations hereunder will not conflict with or violate the terms of any agreement Vendor may have with any Third Party.
- 8.2** All warranties made by Vendor in this Agreement, whether or not this Agreement specifically denominates Vendor's promise as a warranty or whether the warranty is created only by Vendor's affirmation or promise, or is created by a description of the materials and services to be provided, or by provision of samples to the Agency, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Agreement are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Vendor.
- 8.3** Vendor represents, warrants and covenants that all services to be performed under this Agreement shall be performed in a professional, competent, diligent and workmanlike manner by knowledgeable, trained and qualified personnel, all in accordance with the terms and Specifications of this Agreement and the standards of performance considered generally acceptable in the industry for similar tasks and projects. In the absence of a Specification for the performance of any portion of this Agreement, the parties agree that the applicable specification shall be the generally accepted industry standard. So long as the Agency notifies Vendor of any services performed in violation of this standard, Vendor shall re-perform the services at no cost to the Agency, such that the services are rendered in the above-specified manner, or if the Vendor is unable to perform the services as warranted, Vendor shall reimburse the Agency any fees or compensation paid to Vendor for the unsatisfactory services.
- 8.4** Vendor represents, warrants and covenants that it has complied with, and shall comply with, all applicable federal, state, foreign and local laws, rules, regulations, codes, and ordinances in connection with its performance under this Agreement.
- 8.5** Vendor represents, warrants and covenants that it has no interest and shall not acquire any direct or indirect interest that would conflict in any manner or degree with the performance of its obligations under this Agreement.
- 8.6** Vendor represents and warrants that any Enhancements or modifications to the Software will comply with any applicable federal, state foreign and local laws, rules, regulations, codes, and ordinances in effect during the term of this Agreement, including applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, and all standards and requirements established by the

Architectural and Transportation Barriers Access Board and the Iowa Department of Administrative Services, Information Technology Enterprise.

- 8.7** Vendor covenants that it will comply with and adhere to all Agency and State information technology standards, including, without limitation, all technical and security standards, procedures and protocols, and that Vendor will take all precautions necessary to prevent unauthorized access to the Agency's and the State's systems, networks, computers, property, records, data, and information.
- 8.8** Vendor represents and warrants it is not in arrears with respect to the payment of any monies due and owing the State or any agency or other Governmental Entity thereof, including but not limited to the payment of taxes and employee benefits, and it will not become so during the Term of this Agreement, or any extensions thereof.
- 8.9** Vendor's warranties provided in this Section 8 are in addition to and not in lieu of any other warranties provided in this Agreement. All warranties provided for in this Agreement shall be cumulative, shall be deemed consistent and not in conflict, are intended to be given full force and effect and to be interpreted expansively to give the broadest warranty protection to the Agency.

Section 9. Indemnification.

- 9.1** Vendor and its successors and permitted assigns shall indemnify and hold harmless the Agency, the State and their employees, officers, board members, agents, representatives, and officials ("Indemnitees") from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, costs and expenses (including, without limitation, the reasonable value of time of the Attorney General's Office, expert fees, costs of the action, as well as expenses and attorney fees of other counsel retained by any Indemnatee) directly or indirectly related to, resulting from, or arising out of this Agreement, including but not limited to any claims related to, resulting from, or arising out of:
 - 9.1.1** Any violation or breach of any term or condition of this Agreement by or on behalf of Vendor, including, the furnishing or making by Vendor of any statement, representation, warranty or certification in connection with this Agreement, the RFP or the Proposal that is false, deceptive, or misleading; or
 - 9.1.2** Any negligent acts or omissions, intentional or willful misconduct, or unlawful acts of Vendor, its officers, employees, agents, board members, subsidiaries, affiliates, contractors or subcontractors; or
 - 9.1.3** Vendor's performance or attempted performance of this Agreement; or
 - 9.1.4** Failure by Vendor or its employees, agents, officers, directors, subsidiaries, affiliates, contractors or subcontractors to comply with any applicable local, state, federal and international laws, rules, ordinances and regulations; or
 - 9.1.5** Any failure by Vendor or its employees, agents, officers, directors, contractors or subcontractors to make all reports, payments and withholdings required by

Federal and state law with respect to Social Security, worker's compensation, employee income and other taxes, fees or costs required by the Vendor to conduct business in the State; or

9.1.6 Any claim of misappropriation of a trade secret or infringement or violation of any intellectual property rights, proprietary rights or personal rights of any Third Party, including any claim that all or any part of the Software or any use thereof (or the exercise of any rights with respect thereto) infringes, violates or misappropriates any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any Third Party.

9.2 Vendor's obligations under this Section 9 are not limited to third-party claims, but shall also apply to any claims that either party may assert against the other.

9.3 Vendor shall be liable for any personal injury or damage to property caused by the fault or negligence of Vendor, its officers, directors, employees, agents and approved contractors or subcontractors.

9.4 Vendor's duties as set forth in this Section 9 shall survive the termination of this Agreement and shall apply to all acts or omissions taken or made in connection with the performance of this Agreement regardless of the date any potential claim is made or discovered by the Department or any other Indemnitee.

Section 10. Default and Termination.

10.1 Termination for Cause by the Agency. The Agency may terminate this Agreement upon written notice for the breach by Vendor of any material term, condition or provision of this Agreement, if such breach is not cured within the time period specified in the Agency's notice of breach or any subsequent notice or correspondence delivered by the Agency to Vendor, provided that cure is feasible. In addition, the Agency may terminate this Agreement effective immediately without penalty or legal liability and without advance notice or opportunity to cure for any of the following reasons:

10.1.1 Vendor furnished any statement, representation, warranty or certification in connection with this Agreement, the Software License Agreement, the RFP or the Proposal that is false, deceptive, or materially incorrect or incomplete;

10.1.2 Vendor or any of Vendor's officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;

10.1.3 Dissolution of Vendor or any parent or affiliate of Vendor owning a controlling interest in Vendor;

10.1.4 Vendor terminates or suspends its business;

10.1.5 Vendor's corporate existence or good standing in Iowa is suspended, terminated, revoked or forfeited;

10.1.6 Vendor has failed to comply with any applicable international, federal, state, or local laws, rules, ordinances, regulations or orders when performing within the scope of this Agreement;

10.1.7 The Agency determines or believes the Vendor has engaged in conduct that has or may expose the Agency or the State to material liability;

10.1.8 Vendor infringes or allegedly infringes or violates any patent, trademark, copyright, trade dress or any other intellectual property right or proprietary right, or Vendor misappropriates or allegedly misappropriates a trade secret; or

10.1.9 Any of the following has been engaged in by or occurred with respect to Vendor or any corporation, shareholder or entity having or owning a controlling interest in Vendor:

10.1.9.1 Commencing or permitting a filing against it which isn't discharged within ninety (90) days, of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;

10.1.9.2 Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;

10.1.9.3 Making an assignment for the benefit of creditors;

10.1.9.4 Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Vendor's performance of its obligations under this Agreement [or the Software License Agreement]; or

10.1.9.5 Taking any action to authorize any of the foregoing.

The Agency's right to terminate this Agreement shall be in addition to and not exclusive of other remedies available to the Agency, and the Agency shall be entitled to exercise any other rights and pursue any remedies, in law, at equity, or otherwise.

10.2 Termination for Convenience. Following thirty (30) days written notice, the Agency may terminate this Agreement in whole or in part for convenience without the payment of any penalty or incurring any further obligation to Vendor. Termination for convenience can be for any reason or no reason at all.

10.3 Termination Due to Lack of Funds or Change in Law. Notwithstanding anything in this Agreement to the contrary, and subject to the limitations set forth below, the Agency shall have the right to terminate this Agreement without penalty or legal liability and without any advance notice as a result of any of the following:

10.3.1 The legislature or governor fail in the sole opinion of the Agency to appropriate funds sufficient to allow the Agency to either meet its obligations under this Agreement or to operate as required and to fulfill its obligations under this Agreement; or

10.3.2 If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Agency to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Agency in its sole discretion; or

10.3.3 If the Agency's authorization to conduct its business or engage in activities or operations related to the subject matter of this Agreement is withdrawn or materially altered or modified; or

10.3.4 If the Agency's duties, programs or responsibilities are modified or materially altered; or

10.3.5 If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely affects the Agency's ability to fulfill any of its obligations under this Agreement.

The Agency shall provide Vendor with written notice of termination pursuant to this section.

10.4 Limitation of the State's Payment Obligations. In the event of termination of this Agreement for any reason by either party (except for termination by the Agency pursuant to Section 10.1), the Agency shall pay only those amounts, if any, due and owing to Vendor up to and including the date of termination of this Agreement and for which the Agency is obligated to pay pursuant to this Agreement; provided however, that in the event the Agency terminates this Agreement pursuant to Section 10.3, the Agency's obligation to pay Vendor such amounts and other compensation shall be limited by, and subject to, legally available funds. Payment will be made only upon submission of invoices and proper proof of Vendor's claim. Notwithstanding the foregoing, this Section 10.4 in no way limits the rights or remedies available to the Agency and shall not be construed to require the Agency to pay any compensation or other amounts hereunder in the event of Vendor's breach of this Agreement or any amounts withheld by the Agency in accordance with the terms of this Agreement. The Agency shall not be liable, under any circumstances, for any of the following:

10.4.1 The payment of unemployment compensation to Vendor's employees;

10.4.2 The payment of workers' compensation claims, which occur during the Agreement or extend beyond the date on which the Agreement terminates;

10.4.3 Any costs incurred by Vendor in its performance of the Agreement, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Agreement and/or the Software License Agreement;

10.4.4 Any damages or other amounts, including amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Agreement or the Software License Agreement;

10.4.5 Any taxes Vendor may owe in connection with the performance of this Agreement or the Software License Agreement, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

10.5 Vendor's Termination Duties. Upon receipt of notice of termination and upon request of the Agency, Vendor shall:

10.5.1 Cease work under this Agreement and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work performed under the Agreement and such other matters as the Agency may require.

10.5.2 Immediately cease using and return to the Agency any property (including, without limitation, Agency Property) or materials, whether tangible or intangible, provided by the Agency to Vendor.

10.5.3 Cooperate in good faith with the Agency and its employees, agents and independent contractors during the transition period between the notification of termination and the substitution of any replacement service provider.

10.5.4 Immediately return to the Agency any payments made by the Agency for services that were not rendered or provided by Vendor.

10.6 Termination for Cause by Vendor. Vendor may only terminate this Agreement upon written notice of the breach by the Agency of any material term of this Agreement, if such breach is not cured within sixty (60) days of the Agency's receipt of Vendor's written notice of breach.

Section 11. Insurance.

11.1 Insurance Policies. Vendor shall, at its sole expense, maintain in full force and effect, with insurance companies admitted to do business in the State of Iowa and acceptable to the Agency, insurance covering its work of the type and in amounts required by this Agreement. Vendor's insurance shall, among other things, insure against any loss or damage resulting from or related to Vendor's performance of this Agreement regardless of the date the claim is filed or expiration of the policy. All insurance policies required by this Agreement shall: (i) be subject to the approval of the Agency; (ii) remain in full force and effect for the entire term of this Agreement; and (iii) not be canceled, reduced or changed without the Agency's prior written consent. The State of Iowa and the Agency shall be named as additional insureds on all such policies, and all such policies shall include the following endorsement: "It is hereby agreed and understood that the State of Iowa

and the Agency are named as additional insureds, and that the coverage afforded to the State of Iowa and the Agency under this policy shall be primary insurance. If the State of Iowa or the Agency have other insurance which is applicable to a loss, such other insurance shall be on an excess, secondary or contingent basis. The amount of the insurer's liability under this policy shall not be reduced by the existence of such other insurance."

Unless otherwise requested by the Agency, Vendor shall cause to be issued insurance policies with the coverages set forth below:

[Note: Agencies need to determine the appropriate limits and required amounts set forth below. The amounts are merely place holders].

<i>Type of Insurance</i>	Limit	Amount
General Liability (including contractual liability) written on an occurrence basis	General Aggregate Products – Comp/Op Aggregate Personal injury Each Occurrence	\$5 million \$1 million \$1 million \$1 million
Excess Liability, umbrella form	Each Occurrence Aggregate	\$1 million \$2 million
Errors and Omissions Insurance	Each Occurrence	\$2 million
Property Damage	Each Occurrence Aggregate	\$1 million \$2 million
Workers Compensation and Employer Liability	As Required by Iowa law	

11.2 Claims Provision. All insurance policies required by this Agreement must provide coverage on an "occurrence basis" for all claims arising from activities occurring during the term of the policy regardless of the date the claim is filed or expiration of the policy.

11.3 Certificates of Coverage. At the time of execution of this Agreement, Vendor shall deliver to the Agency certificates of insurance certifying the types and the amounts of coverage, certifying that said insurance is in force before the Vendor starts work, certifying that said insurance applies to, among other things, the work, activities, products and liability of the Vendor related to this Agreement, certifying that the State of Iowa and the Agency are named as additional insureds on the policies of insurance by endorsement as required herein, and certifying that no cancellation or modification of the insurance will be made without at least thirty (30) days prior written notice to the Agency. All certificates of insurance shall be subject to approval by the Agency. The Vendor shall simultaneously with the delivery of the certificates deliver to the Agency one duplicate original of each insurance policy.

- 11.4 Liability of Vendor.** Acceptance of the insurance certificates by the Agency shall not act to relieve Vendor of any obligation under this Agreement. It shall be the responsibility of Vendor to keep the respective insurance policies and coverages current and in force during the life of this Agreement. Vendor shall be responsible for all premiums, deductibles and for any inadequacy, absence or limitation of coverage, and the Vendor shall have no claim or other recourse against the State or the Agency for any costs or loss attributable to any of the foregoing, all of which shall be borne solely by the Vendor. Notwithstanding any other provision of this Agreement, Vendor shall be fully responsible and liable for meeting and fulfilling all of its obligations under Section 11 of this Agreement.
- 11.5 Waiver of Subrogation Rights.** Vendor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against the Agency or the State. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the Agency.
- 11.6 Filing of Claims.** In the event either the Agency or the State suffers a loss and is unable to file a claim under any policy of insurance required under this Agreement, the Vendor shall, at the Agency's request, immediately file a proper claim under such policy. Vendor will provide the Agency with proof of filing of any such claim and keep the Agency fully informed about the status of the claim. In addition, Vendor agrees to use its best efforts to pursue any such claim, to provide information and documentation requested by any insurer providing insurance required hereunder and to cooperate with the Agency and the State. Vendor shall pay to the Agency and the State any insurance proceeds or payments in receives in connection with any such claim immediately upon Vendor's receipt of such proceeds or payments.
- 11.7 Proceeds.** In the event the Agency or the State suffers a loss that may be covered under any of the insurance policies required under this Section 11, neither the Vendor nor any subsidiary or affiliate thereof shall have any right to receive or recover any payments or proceeds that may be made or payable under such policies until the Agency and/or the State have fully recovered any losses, damages or expenses sustained or incurred by it (subject to applicable policy limits), and Vendor hereby assigns to the Agency and the State all of its rights in and to any and all payments and proceeds that may be made or payable under each policy of insurance required under this Agreement.

Section 12. Contract Administration.

- 12.1 Independent Contractor.** Vendor is an independent contractor performing services for the Agency. Vendor shall not hold itself out as an employee or agent of the Agency. The Agency shall not provide Vendor with office space, support staff, equipment or tools, or supervision beyond the terms of this Agreement. Neither Vendor nor any of its staff are eligible for any State employee benefits, including, but not limited to, retirement benefits, insurance coverage or the like. Vendor and

its staff shall not be considered employees of the Agency or the State for any purpose, including for federal or State tax purposes. The Agency shall not withhold taxes on behalf of Vendor. Vendor shall be responsible for payment of all taxes in connection with any income earned from performing this Agreement.

12.2 Compliance with the Law and Regulations.

12.2.1 Vendor and its employees, agents, officers, directors, approved contractors and subcontractors shall comply with all applicable federal, state, international, and local laws, rules, ordinances, codes, regulations and orders when performing within the scope of this Agreement, including without limitation, all laws applicable to the prevention of discrimination in employment, the administrative rules of the Iowa Department of Management and the Iowa Civil Rights Commission which pertain to equal employment opportunity and affirmative action, laws relating to prevailing wages, occupational safety and health standards, prevention of discrimination in employment, payment of taxes, gift laws, lobbying laws, and laws relating to the use of targeted small businesses as subcontractors or suppliers. Vendor shall comply with any applicable reporting and compliance standards of the Iowa Department of Management regarding equal employment. Vendor may be required to submit its affirmative action plan to the Iowa Department of Management to comply with the requirements of 541 Iowa Admin. Code Chapter 4. Vendor shall make the provisions of this section a part of its contracts with any approved subcontractors providing goods or services related to Vendor's performance of this Agreement.

12.2.2 Vendor shall give notice to any labor union with which it has a bargaining or other agreement of its commitment under this section of the Agreement. Vendor shall make the provisions of this section a part of its contracts with any approved subcontractors providing goods or services related to the fulfillment or performance of this Agreement.

12.2.3 The Agency may consider the failure of Vendor to comply with any law or regulation as a material breach of this Agreement.

12.3 Confidentiality. Vendor and its employees, agents, approved contractors and subcontractors may have access to Confidential Information, data, software, hardware, programs or other information or property possessed, owned or maintained by the Agency or the State ("Agency Property") to the extent necessary to carry out its responsibilities under the Agreement. Such Agency Property shall at all times remain the property of the Agency and/or the State. Vendor shall preserve the confidentiality of Agency Property disclosed or furnished by the Agency to Vendor and shall maintain procedures for safeguarding such property. Vendor must designate one individual who shall remain the responsible authority in charge of all Agency Property collected, used, or disseminated by Vendor in connection with the performance of this Agreement. Vendor shall accept responsibility for providing adequate supervision and training to its agents, employees and any approved

contractors and subcontractors to ensure compliance with the terms of this Agreement. Vendor and its employees, agents, and any approved contractors or subcontractors may be required by the Agency to execute confidentiality or non-disclosure agreements to obtain access to certain Agency Property. Vendor and its employees, agents, approved contractors and subcontractors shall not disclose, publish, reproduce, disseminate or otherwise use any Agency Property received, collected, maintained, or used in the course of performance of the Agreement except as permitted by the Agency to enable Vendor to perform its obligations under this Agreement and except as required by applicable laws, rules or regulations, either during the term of this Agreement or thereafter. Vendor agrees to return any and all Agency Property received, collected, accessed, maintained, created, or used in the course of the performance of the Agreement in whatever form it is maintained promptly at the request of the Agency. In the event that Vendor receives a request for access to any Agency Property, Vendor shall immediately communicate such request to the Agency for consideration and handling.

Vendor shall indemnify the Agency, the State and all other Indemnitees in the manner provided for indemnification elsewhere in this Agreement for a violation of this section. In the event of a breach of this section, the Agency may terminate this Agreement immediately without notice of default and opportunity to cure. Vendor acknowledges that the disclosure of any Confidential Information of the Agency or the State will immediately give rise to continuing irreparable injury to the Agency and others that is inadequately compensable in damages at law. Accordingly, and without prejudice to any other remedy available to the Agency, the Agency will be entitled to injunctive relief. Vendor's obligations under this section shall survive expiration or termination of this Agreement.

12.4 Amendments. This Agreement may be amended in writing from time to time by mutual consent of the parties. Both parties must execute all amendments to this Agreement.

12.5 Third Party Rights. No person other than the parties hereto, their respective successors and permitted assigns, the State and Governmental Entities may rely on or derive any rights pursuant to or under this Agreement. This Agreement is intended to benefit only the Agency, the State, Governmental Entities and the Vendor.

12.6 Choice of Law and Forum.

12.6.1 This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the State of Iowa, without giving effect to the choice of law principles thereof.

12.6.2 Any and all litigation or actions commenced in connection with this Agreement, including after expiration or termination of this Agreement, shall be

brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. Vendor irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with or arising out of this Agreement shall be brought and maintained exclusively in the aforesaid courts; (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (iii) waives any objection to such jurisdiction based on forum non conveniens or otherwise.

12.6.3 This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the Agency or the State, including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise.

12.6.4 Vendor irrevocably consents to service of process by certified or registered mail addressed to the Vendor's designated agent. The Vendor appoints _____, as its agent to receive service of process. If for any reason the Vendor's agent for service is unable to act as such or the address of the agent changes, Vendor shall immediately appoint a new agent and provide the Agency with written notice of the change in agent or address. Any change in the appointment of the agent or address will be effective only upon actual receipt by the Agency. Nothing in this provision will alter the right of the Agency to serve process in any other manner permitted by law.

12.6.5 This Section 12.6 shall survive termination of this Agreement.

12.7 Assignment and Delegation. This Agreement may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party, except that the Agency may assign this Agreement to any State agency or unit of State government that succeeds the Agency's duties hereunder or otherwise assumes responsibility for functions or duties currently assumed by the Agency. For purposes of construing this clause, a transfer of a controlling interest in Vendor, a merger, sale or consolidation of Vendor, or a sale of substantially all of Vendor's assets shall be considered an assignment. Vendor agrees that it shall provide the Agency with the earliest possible advance notice of any proposed sale or transfer or any controlling interest in or substantial assets of Vendor and of any proposed merger, sale or consolidation of Vendor. Vendor agrees that it shall not use this Agreement, or any portion thereof, for collateral or to otherwise secure any financial obligation of Vendor or any affiliate thereof without the prior written consent of the Agency.

12.8 Use of Subcontractors/Third Parties. None of the services to be provided by Vendor pursuant to this Agreement shall be subcontracted or delegated to any Third Party without the prior written consent of the Agency. The Agency's consent shall not be deemed in any way to provide for the incurrence of any additional obligation of the Agency, whether financial or otherwise. Any subcontract to which the Agency has consented shall be in writing and shall in no way alter the terms and conditions of this Agreement. **All subcontracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that the Agency may deem necessary.** Vendor is solely liable for any and all payments that may be due to a subcontractor pursuant to any subcontract. Vendor shall indemnify, defend and hold harmless the Agency and the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Vendor's breach of any subcontract into which it enters, including Vendor's failure to pay any and all amounts due to any subcontractor. In addition, the Agency is not responsible for any failure of any other subcontractor to pay any amounts that may be due to Vendor, and Vendor may not refuse to perform its obligations under this Agreement for any such failure. If Vendor fails, neglects or refuses to pay promptly, as due, any claim for labor or services furnished to Vendor or any subcontractor by any person in connection with the services provided under this Agreement, the Agency may pay such claim and charge the amount of the payment against funds due or to become due Vendor under this Agreement. The payment of a claim in the manner authorized in this paragraph shall not relieve Vendor or its surety from obligation with respect to any unpaid claims. All subcontracts shall contain provisions for the Agency access to the subcontractor's books, documents, and records and for inspections of work, as required of Vendor herein. No subcontract or delegation of work shall relieve or discharge Vendor from any obligation, provision, or liability under this Agreement. Vendor shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any such contractor or subcontractor. Any action of a subcontractor, which, if done by Vendor, would constitute a breach of this Agreement, shall be deemed a breach by Vendor and have the same legal effect.

12.9 Integration. This Agreement and the Software License Agreement represents the entire Agreement between the parties concerning the subject matter hereof, and neither party is relying on any representation that may have been made which is not included in this Agreement or the Software License Agreement. The Agency shall not be bound by any "shrink-wrap" agreement, "click-wrap" agreement, or "sneakwrap" agreement (or any other similar agreement) that may accompany or relate to the Software. Vendor acknowledges that it has thoroughly read this Agreement and all related schedules, exhibits, and other documents and has had the opportunity to receive competent advice and counsel necessary for it to form a complete understanding of all rights and obligations herein and to accept same freely and without coercion of any kind. Accordingly, this Agreement shall not be construed or interpreted against the Agency on the basis of draftsmanship or preparation thereof.

12.10 Obligation Beyond Agreement Term. This Agreement shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Agreement. Vendor's obligations under this Agreement which by their nature would continue beyond the termination of this Agreement, including, by way of illustration and not by limitation, those obligations set forth in Sections 4.1, 4.5, 5.1 - 5.7, 8.1 - 8.9, 9.1 - 9.4, 10.4 - 10.6, 11.1-11.7, 12.2, 12.3, 12.6, 12.8, 12.10 - 12.16, 12.18, 12.19, 12.23, 12.24, 12.25, 12.28, 12.30, 12.32, 12.33, 12.36, and 12.37 – 12.39 shall survive termination of this Agreement and/or termination of maintenance and support services.

12.11 Supersedes Former Agreements. This Agreement supersedes all prior Agreements between the Agency and Vendor for the Software maintenance and technical support services provided in connection with this Agreement, except for the Software License Agreement.

12.12 Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of the Agency and Vendor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of this Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.

12.13 Notices.

12.13.1 Notices. Notices under this Agreement shall be in writing and delivered to the representative of the party to receive notice (identified below) at the address of the party to receive notice as it appears below or as otherwise provided for by proper notice hereunder. The effective date for any notice under this Agreement shall be the date of delivery of such notice (not the date of mailing) which may be effected by certified U.S. Mail return receipt requested with postage prepaid thereon or by recognized overnight delivery service, such as Federal Express or UPS:

If to the Agency:

Iowa Department of Human Services
1305 E. Walnut St.
Hoover Bldg., 2nd Floor
Des Moines, Iowa 50319

If to the Vendor:

12.13.2 Any notice or communication sent by certified U.S. Mail under this Agreement shall be deemed given upon receipt as evidenced by the U.S. Postal

Service return receipt card, or if sent by overnight delivery service, upon receipt as evidenced by the signature attained by the carrier.

12.13.3 From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

12.14 Cumulative Rights. The various rights, powers, options, elections and remedies of the Agency and the State provided in this Agreement shall be construed as cumulative and no one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed the Agency and the State by law, and shall in no way affect or impair the right of the Agency or the State to pursue any other contractual, equitable or legal remedy to which the Agency and the State may be entitled. The election by the Agency or the State of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

12.15 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.

12.16 Time is of the Essence. Time is of the essence with respect to Vendor's performance of its obligations under this Agreement. Vendor shall ensure that all personnel, including any subcontractors of Vendor, providing services to the Agency are responsive to the Agency's requirements and requests in all respects.

12.17 Authorization. Vendor represents and warrants that it has the right, power and authority to enter into and perform its obligations under this Agreement and that it has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery and performance of this Agreement, and this Agreement constitutes a legal, valid and binding obligation of Vendor, enforceable in accordance with its terms.

12.18 Successors in Interest. All the terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the parties' hereto and their respective successors, assigns, and legal representatives.

12.19 Records Retention and Access. Vendor shall maintain books, documents and records that sufficiently and properly document Vendor's performance under this Agreement, including records that document all fees and other amounts charged during the term of this Agreement, for a period of at least five (5) years following the later of the date of final payment, termination or expiration of this Agreement, or the completion of any required audit. Vendor shall permit the Auditor of the State of Iowa or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, at no charge, to access and examine, audit, excerpt and transcribe any pertinent books, documents, electronic or

optically stored and created records or other records of Vendor relating directly or indirectly to Vendor's performance under this Agreement. Vendor shall not impose a charge or seek payment for any fee, charge, or expense associated with any audit or examination of such books, documents and records. Vendor shall require its subcontractors to agree to the same provisions of this section.

12.20 Headings or Captions and Terms. The section headings or captions are for identification purposes only and do not limit or construe the contents of the sections. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural, and the word "or" has the inclusive meaning represented by the phrase "and/or." The words "include" and "including" shall be deemed to be followed by the phrase "without limitation." The words "thereof," "herein," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.

12.21 Multiple Counterparts. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one contract binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

12.22 Not a Joint Venture. Nothing in this Agreement shall be construed as creating or constituting the relationship of the partnership, joint venture (or other association of any kind or agent/principal relationship) between the parties hereto. No party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon, another party to this Agreement.

12.23 Additional Provisions. The parties agree that if an Addendum, Rider, Schedule, Appendix or Exhibit is attached hereto by the parties, and referred to herein, then the same shall be deemed incorporated herein by reference.

12.24 Further Assurances and Corrective Instruments. The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

12.25 Obligations of Joint Entities. If Vendor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this agreement, and for any default of such activities and obligations.

12.26 Delays or Impossibility of Performance. Neither party shall be in default under this Agreement if performance is prevented, delayed or made impossible to the extent that such prevention, delay, or impossibility is caused by a "force majeure."

The term “force majeure” as used in this Agreement includes an event that no human foresight could anticipate or which if anticipated, is incapable of being avoided. Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care, such as acts of God, war, civil disturbance and other similar catastrophic events or causes. The delay or impossibility of performance must be beyond the control and without the fault or negligence of the parties. “Force majeure” does not include: financial difficulties of the Vendor or any parent, subsidiary, affiliated or associated company of Vendor or any subcontractor used by Vendor; claims or court orders that restrict Vendor’s ability to deliver the Deliverables contemplated by this Agreement; strikes; labor unrest; or supply chain disruptions. If delay results from a subcontractor’s or supplier’s conduct, negligence or failure to perform, the Vendor shall not be excused from compliance with the terms and obligations of the Vendor unless the subcontractor or supplier is prevented from timely performance by a “force majeure” as defined in this Agreement. If a “force majeure” delays or prevents the Vendor’s performance, the Vendor shall immediately use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be determined solely by the Agency. The party seeking to exercise this provision and not perform or delay performance pursuant to a “force majeure” shall immediately notify the other party of the occurrence and reason for the delay. The parties shall make every effort to minimize the time of nonperformance and the scope of work not being performed due to the unforeseen events. Dates by which the Vendor’s performance obligations are scheduled to be met will be extended only for a period of time equal to the time lost due to any delay so caused.

- 12.27 Material Breaches.** The references in this Agreement to specific material breaches of this Agreement shall not be construed as implying that other breaches of this Agreement are not material.
- 12.28 Right of Inspection.** Vendor shall allow the Agency, or anyone designated by the Agency, to inspect its facilities and books and records at all reasonable times in order to monitor and evaluate performance of this Agreement.
- 12.29 Taxes.** Vendor shall be responsible for paying any taxes incurred by Vendor in the performance of this Agreement. The Agency and the State are exempt from the payment of State sales and other taxes.
- 12.30 Title to Property.** Title to all property (including Agency Property) furnished by the Agency and/or the State to Vendor to facilitate the performance of this Agreement shall remain the sole property of the Agency and/or the State. All such property shall only be used by Vendor for purposes of fulfilling its obligations under this Agreement and shall be returned to the Agency upon the earliest of completion, termination, or cancellation of this Agreement or at the Agency’s request. Vendor acknowledges that it shall acquire no interest or rights in and to such property. Except as expressly provided in this Agreement, Vendor shall not

disclose or use such property for any purpose, including pledging or encumbering it, selling or using it for monetary gain, using it to compile mailing lists, solicit business or pursue other business activities, or otherwise. Title to all property purchased by Vendor, for which Vendor has been reimbursed or paid by the Agency under this Agreement, shall pass to and vest in the Agency and/or State, except as otherwise provided in this Agreement.

12.31 Exclusivity. This Agreement is not exclusive. During the term of this Agreement, the Agency may obtain similar services from other service providers.

12.32 Award of Related Agreements. The Agency may undertake or award supplemental or successor agreements for work related to this Agreement. Vendor shall cooperate fully with other contractors, consultants and other persons who may be engaged by the Agency or the State in connection with this Agreement. Vendor will ensure that any of its contractors or subcontractors that have been approved by the Agency will abide by this provision.

12.33 Sovereign Immunity. The Agency and the State do not waive sovereign immunity by entering into this Agreement and specifically retain and reserve the defense of sovereign immunity and all defenses available to them under State and federal laws, rules and regulations for any claim arising out of or related to this Agreement.

12.34 Disclaimer. All information contained in the RFP and any appendices or attachments thereto reflect the information available to the Agency at the time the above-cited documents were prepared. The Agency does not warrant the accuracy of any such information and shall not be liable for any errors or omissions, or the results of errors or omissions, which may be discovered, at any time, to exist in those documents.

12.35. Assignment of Third Party Warranties. Vendor hereby assigns and shall assign to the Agency any and all existing and future warranties, indemnities and other benefits obtained or available from the licensor of any Third Party software or the manufacturer of any equipment or replacement parts provided or otherwise furnished in connection with this Agreement.

12.36. Attorney's Fees and Expenses. In the event Vendor defaults in any obligations under this Agreement, Vendor shall pay to the Agency all costs and expenses (including, without limitation, the reasonable value of time of the Attorney General's Office and the expert fees, costs, expenses and attorney fees of other counsel retained by or on behalf of the Agency) incurred by the Agency in enforcing this Agreement or any of its rights and remedies with respect thereto.

12.37 Contract Compliance Audit. Vendor agrees that the Agency or a representative of its selection may conduct a complete contract compliance audit at least once annually during the term of this Agreement and after termination or expiration of

this Agreement to determine whether or not the Vendor is complying with the terms of this Agreement, criteria established for access to Agency Property, State and federal laws regarding Confidential Information, and any other applicable laws and regulations. Vendor shall promptly comply with and correct any deficiencies noted in the audit report as audit exceptions and will promptly implement any recommendations reasonably requested by the Agency or its representatives. Vendor shall not impose any charge or fee in connection with any contract compliance audit.

12.38 Care of Property. Vendor shall be responsible for the proper custody and care of any property, data, databases, software, interfaces, hardware, telecommunications lines and equipment, intellectual property and Agency Property furnished by the Agency for Vendor's use in connection with the performance of the Agreement. Vendor shall exercise its best efforts to prevent damage to all such property and shall, at the Agency request, restore damaged property to the extent possible to its condition prior to the damage at the sole expense of Vendor. Such restoration shall be complete when judged satisfactory by the Agency. In addition, at the Agency's request, Vendor will reimburse the Agency for any loss or damage to such property caused by Vendor, or any agent, contractor or subcontractor employed or utilized by Vendor. Vendor shall not take any action that would impair the value of, or goodwill associated with, the name, property and intellectual property rights of the Agency and the State. Vendor shall obtain the prior advance written approval from the Agency prior to Vendor's use (in advertising, publicity, public contract bidding, or otherwise) of the name, marks or intellectual property rights of the Agency or the State.

12.39 Notification of Events. Vendor shall notify the Agency in writing if any of the following has been engaged in by or occurred with respect to Vendor or any corporation, shareholder or entity having or owning a controlling interest in Vendor:

12.39.1 Vendor files or permits the filing against it of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or

12.39.2 Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; or

12.39.3 Making an assignment for the benefit of creditors; or

12.39.4 Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Vendor's performance of its obligations under this Agreement; or

12.39.5 An order is entered approving an involuntary petition to reorganize the business of Vendor for all or part of its property; or

12.39.6 If a writ or warrant of attachment, execution, distraint, levy, possession or any similar process that may materially affect the operation of Vendor is issued by any court or administrative agency against all or any material portion of Vendor's property; or

12.39.7 Taking any action to authorize any of the foregoing.

IN WITNESS WHEREOF, in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Agreement and have caused their duly authorized representatives to execute this Agreement.

State of Iowa, acting by and through the
[name of Agency]

[name of Vendor]

By: _____
Name: _____
Title: _____

Date: _____

By: _____
Name: _____
Title: _____

Date: _____

SCHEDULE A

SCHEDULE B